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Atorneys for Plaintiffs, *LAURA MAKENNA, REGINALD SCOTT, LORI MARIE WEAVER, MARK CASTRO, and DRESSTIN WAGONER, and all others similarly situated*

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAURA MAKENNA, REGINALD SCOTT, LORI MARIE WEAVER, MARK CASTRO, and DRESSTIN WAGONER, individually, and on behalf of other members of the general public similarly situated,

Plaintiff,

VS.

AMAZON.COM, LLC,

Defendant.

Case No. 4:17-cv-04412-YGR

FIRST AMENDED CLASS ACTION COMPLAINT

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*)
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)
- (3) Violation of Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*)
- (4) Violation of the Deceptive Trade Practices-Consumer Protection Act (Texas Business and Commerce Code § 17.40 *et seq.*)
- (5) Violation of Electronic Funds Transfer Act (15 U.S.C. §1693 *et seq.*)

Jury Trial Demanded

1 Plaintiffs LAURA MAKENNA, REGINALD SCOTT, LORI MARIE
2 WEAVER, MARK CASTRO, and DRESSTIN WAGONER (collectively,
3 “Plaintiffs”), individually and on behalf of all other members of the public similarly
4 situated, allege as follows:

5 **NATURE OF THE ACTION**

6 1. Plaintiffs bring this class action Complaint against Defendant
7 AMAZON.COM, LLC (hereinafter “Defendant”) to stop Defendant’s practice of
8 falsely advertising its services and to obtain redress for a nationwide class of
9 consumers (“Class Members”) who purchased these services, within the
10 applicable statute of limitations period.

11 2. Defendant is a Delaware corporation and is engaged in the
12 manufacture, sale, and distribution of computers and related equipment and
13 services with its principle place of business in Delaware and headquarters in
14 Washington.

15 3. Defendant represents to its consumers that they could use its services
16 to purchase products directly from its website at no cost to the consumer in
17 addition to the cost of the product.

18 4. However, despite these representations, Defendant charged Plaintiffs
19 and similarly situated consumers additional fees. Specifically, when consumers
20 purchased products from Defendant, they were also charged an additional
21 “Amazon Prime” membership fee.

22 5. Defendant misrepresented and falsely advertised its services to
23 Plaintiffs and others similarly situated.

24 6. Defendant’s misrepresentations to Plaintiffs and others similarly
25 situated caused them to use Defendant’s services, which Plaintiffs and others
26 similarly situated would not have used absent these misrepresentations by
27 Defendant and its employees. In so doing, Defendant has violated California
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1 consumer protection statutes.

2 **NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT**

3 7. Consumers purchase products on Defendant's website.

4 8. Consumers rely on the representations and advertisements of retailers
5 in order to know which products and services to use.

6 9. Defendant is an online company that is engaged in the sale of many
7 different kinds of products through facilitating sales by third party retailers.

8 10. Consumers use Defendant's representations in order to determine
9 whether or not to use its services and purchase products on Defendant's website.

10 11. Defendant profits from both from the sale of its products as well as
12 its services. With proper representation, many of the consumers would not have
13 purchased products from Defendant.

14 12. Defendant conceals that it charges a membership fee when consumers
15 purchase products on its website.

16 13. Defendant does not present consumers with a written copy of the
17 correct terms of the purchase prior to purchase.

18 14. Defendant makes written representations to consumers which
19 contradict what is actually charged to Defendants.

20 15. The aforementioned written and oral representations are objectively
21 false, and constitute a false advertisement under Cal. Bus. & Prof. Code §§ 17500
22 *et. seq.* and Cal. Civ. Code §§ 1750 *et seq.*, and an unlawful, unfair, or deceptive
23 business practices under Cal. Bus. & Prof. Code §§ 17200 *et. seq.* and Texas
Business and Commerce Code § 17.40 *et seq.*.

24 16. Furthermore, Plaintiffs bring this Class Action Complaint for
25 Defendant's violation of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et*
26 *seq.*.

27 17. Defendant's violations of the law include, but not limited to, the false
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1 advertising, marketing, representations, and sale of the invalid Class Products to
2 consumers in California.

3 18. On behalf of the class, Plaintiffs seek an injunction requiring
4 Defendant to cease advertising its services as free and an award of damages to the
5 Class Members, together with costs and reasonable attorneys' fees.

6 **JURISDICTION AND VENUE**

7 19. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because minimal
8 diversity exists and the damages Plaintiffs seek exceed five million dollars of
9 money (\$5,000,000.00), and 28 U.S.C. 1331 as this Court has federal question
10 jurisdiction as this matter arises out of a question of federal law, namely the
11 Electronic Funds Transfer Act, 15 U.S.C. § 1693 et. seq.

12 20. Venue is proper in the United States District Court for the Northern
13 District of California pursuant to 28 U.S.C. § 1331(b)(2) because a substantial
14 portion of the events giving rise to this action occurred here.

15 **THE PARTIES**

16 21. Plaintiff LAURA MAKENNA ("MAKENNA") is a citizen and
17 resident of the State of California, County of San Diego.

18 22. Plaintiff REGINALD SCOTT ("SCOTT") is a citizen and resident of
19 the State of Texas, County of Harris.

20 23. Plaintiff LORI MARIE WEAVER ("WEAVER") is a citizen and
21 resident of the State of California, County of Stanislaus.

22 24. Plaintiff MARK CASTRO ("CASTRO") is a citizen and resident of
23 the State of California, County of Riverside.

24 25. Plaintiff DRESSTIN WAGONER ("WAGONER") is a citizen and
25 resident of the State of Texas, County of Tarrant.

26 26. Plaintiffs LAURA MAKENNA, REGINALD SCOTT, LORI
27 MARIE WEAVER, MARK CASTRO, and DRESSTIN WAGONER will

1 collectively be referred to as "Plaintiffs" herein.

2 23. Defendant Amazon.com, LLC is a Limited Liability Company with
3 its principle place of business located in Delaware and headquarters in
4 Washington. Defendant is a Delaware Corporation. Defendant's principle place
5 of business is within Washington.

6 24. Plaintiffs allege, on information and belief, that Defendant's
7 marketing campaigns, as pertains to this matter, were created by Defendant at its
8 principle place of business in California, and were disseminated from California,
9 nationwide.

10 25. Plaintiffs are informed and believe, and thereon allege, that at all time
11 relevant, Defendant's sales of products and services are governed by the
12 controlling law in the state in which it does business and from which the sales or
13 products and services, and the allegedly unlawful acts originated, which is
14 California.

15 26. Plaintiffs are informed and believe, and thereon allege, that each and
16 all of the acts and omissions alleged herein were performed by, or is attributable
17 to, Defendant and/or its employees, agents, and/or third parties acting on its behalf,
18 each acting as the agent for the other, with legal authority to act on the other's
19 behalf. The acts of any and all of Defendant's employees, agents, and/or third
20 parties acting on its behalf, were in accordance with, and represent, the official
21 policy of Defendant.

22 27. Plaintiffs are informed and believe, and thereon allege, that said
23 Defendant is in some manner intentionally, negligently, or otherwise responsible
24 for the acts, omissions, occurrences, and transactions of each and all its employees,
25 agents, and/or third parties acting on its behalf, in proximately causing the
26 damages herein alleged.

27 28. At all relevant times, Defendant ratified each and every act or

1 omission complained of herein. At all relevant times, Defendant, aided and abetted
2 the acts and omissions as alleged herein.

3 **PLAINTIFF LAURA MAKENNA' FACTS**

4 29. In 2012, MAKENNA went to Defendant's website and purchased
5 some products utilizing Defendant's services.

6 30. In utilizing these services, Plaintiff MAKENNA was informed
7 through various written representations by Defendant that she would not be
8 charged for membership and only the products that she purchased.

9 31. As a result of Defendant's representations, MAKENNA provided
10 Defendant with her debit card information in order to purchase the products
11 referred to above.

12 32. However, Defendant upgraded her account to the premium
13 membership known as "Amazon Prime" without her permission or knowledge.

14 33. Over the next several years, from 2012 through 2016, MAKENNA
15 was charged by Defendant each year for the premium "Amazon Prime"
16 membership. That is, over the span of several years, Defendant automatically and
17 regularly deducted funds from MAKENNA's debit card account sans
18 MAKENNA's knowledge or consent.

19 34. Including taxes and fees, MAKENNA was charged on her debit card
20 for over \$400.00 for the premium membership.

21 35. MAKENNA is informed, believes, and thereupon alleges that
22 Defendant set up MAKENNA's payment of the unauthorized and undesired
23 membership to automatically withdraw money directly from MAKENNA's bank
24 account.

25 36. MAKENNA did not realize that Defendant had been making
26 automatic and regular deductions from her debit card until within the last year, and
27 she demanded that Defendant cease doing so at her first opportunity and canceled
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1 her membership.

2 37. MAKENNA is informed, believes, and thereupon alleges that had not
3 MAKENNA canceled the membership services, the Defendant would have taken
4 additional unauthorized, multiple, and reoccurring payments from MAKENNA's
5 bank account.

6 38. MAKENNA was drawn to use Defendant's website in part by
7 Defendant's prices.

8 39. Relying on Defendant's assurances that the prices by Defendant
9 would be accurate, MAKENNA decided to purchase products from Defendant's
10 website.

11 40. Such sales tactics rely on falsities and have a tendency to mislead and
12 deceive a reasonable consumer.

13 41. MAKENNA alleges that Defendant's representations were part of a
14 common scheme to mislead consumers and incentivize them to purchase products
15 from its website.

16 42. In purchasing the products from Defendant, MAKENNA relied upon
17 Defendant's representations.

18 43. MAKENNA would not have purchased products from Defendant if
19 she knew that the above-referenced statements made by Defendant were false.

20 44. Had Defendant properly marketed, advertised, and represented its
21 services as costing a hidden fee, MAKENNA would not have used Defendant's
22 services.

23 45. MAKENNA gave her money to Defendant because of the prices of
24 Defendant's products. Defendant benefited from falsely advertising its products
25 and services. MAKENNA received nothing for giving her money to Defendant.
26 Defendant benefited on the loss to MAKENNA and provided nothing of benefit
27 to MAKENNA in exchange.

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46. Had Defendant properly marketed, advertised, and represented its services, no reasonable consumer who purchased a printer would have believed that they could purchase products from Defendant without paying a membership fee.

PLAINTIFF REGINALD SCOTT'S FACTS

47. In 2015, SCOTT went to Defendant's website and purchased some products utilizing Defendant's services.

48. In utilizing these services, SCOTT was informed through various written representations by Defendant that he would not be charged for membership and only the products that he purchased.

49. As a result of Defendant's representations, SCOTT provided Defendant with his debit card information in order to purchase the products referred to above.

50. However, Defendant upgraded his account to the premium membership known as “Amazon Prime” without his permission or knowledge.

51. Over the next two years, from 2015 through 2017, SCOTT was charged by Defendant multiple times for the premium “Amazon Prime” membership. That is, from 205 through 2017, Defendant automatically and regularly deducted funds from SCOTT’s debit card account in the amount of \$107.17 sans SCOTT’s knowledge or consent.

52. SCOTT is informed, believes, and thereupon alleges that Defendant set up SCOTT's payment of the unauthorized and undesired membership to automatically withdraw money directly from SCOTT's bank account.

53. SCOTT did not realize that Defendant had been making automatic and regular deductions from his debit card until within the last year, and he demanded that Defendant cease doing so at his first opportunity and canceled his membership.

1 54. SCOTT is informed, believes, and thereupon alleges that had not
2 SCOTT canceled the membership services, the Defendant would have taken
3 additional unauthorized, multiple, and reoccurring payments from SCOTT's bank
4 account.

5 55. Furthermore, Defendant refused to give SCOTT a full refund based
6 on Defendant's policy on only refunding money to the card from which funds were
7 taken. In other words, Defendant refused to refund SCOTT's money merely
8 because SCOTT had since closed the account from which Defendant deducted
9 funds.

10 56. SCOTT was drawn to use Defendant's website in part by Defendant's
11 prices.

12 57. Relying on Defendant's assurances that the prices by Defendant
13 would be accurate, SCOTT decided to purchase products from Defendant's
14 website.

15 58. Such sales tactics rely on falsities and have a tendency to mislead and
16 deceive a reasonable consumer.

17 59. SCOTT alleges that Defendant's representations were part of a
18 common scheme to mislead consumers and incentivize them to purchase products
19 from its website.

20 60. In purchasing the products from Defendant, SCOTT relied upon
21 Defendant's representations.

22 61. SCOTT would not have purchased products from Defendant if he
23 knew that the above-referenced statements made by Defendant were false.

24 62. Had Defendant properly marketed, advertised, and represented its
25 services as costing a hidden fee, SCOTT would not have used Defendant's
26 services.

27 63. SCOTT gave his money to Defendant because of the prices of
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1 Defendant's products. Defendant benefited from falsely advertising its products
2 and services. SCOTT received nothing for giving his money to Defendant.
3 Defendant benefited on the loss to SCOTT and provided nothing of benefit to
4 SCOTT in exchange.

5 64. Had Defendant properly marketed, advertised, and represented its
6 services, no reasonable consumer who purchased a printer would have believed
7 that they could purchase products from Defendant without paying a membership
8 fee.

9 **PLAINTIFF LORI MARIE WEAVER'S FACTS**

10 65. In or around 2016, WEAVER went to Defendant's website and
11 purchased some products utilizing Defendant's services.

12 66. In utilizing these services, WEAVER was informed through various
13 written representations by Defendant that she would not be charged for
14 membership with "Amazon Prime" and only the products that she purchased.

15 67. As a result of Defendant's representations, WEAVER provided
16 Defendant with her debit card information in order to purchase the products
17 referred to above.

18 68. However, Defendant upgraded her account to the premium
19 membership known as "Amazon Prime" without her permission or knowledge.

20 69. That is, Plaintiff paid a onetime fee for "Amazon Prime" as
21 represented by Defendant, for one year, but after that year, Defendant enrolled her
22 in "Amazon Prime" membership and continued to debit her account without her
23 knowledge or consent.

24 70. WEAVER is informed, believes, and thereupon alleges that
25 Defendant set up WEAVER's payment of the unauthorized and undesired
26 membership to automatically withdraw money directly from WEAVER's bank
27 account.

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1 71. WEAVER did not realize that Defendant had been making automatic
2 and regular deductions from her debit card until within the last year, and she
3 demanded that Defendant cease doing so at her first opportunity and canceled her
4 membership.

5 72. WEAVER is informed, believes, and thereupon alleges that had not
6 WEAVER canceled the membership services, the Defendant would have taken
7 additional unauthorized, multiple, and reoccurring payments from WEAVER's
8 bank account.

9 73. WEAVER was drawn to use Defendant's website in part by
10 Defendant's prices.

11 74. Relying on Defendant's assurances that the prices by Defendant
12 would be accurate, WEAVER decided to purchase products from Defendant's
13 website.

14 75. Such sales tactics rely on falsities and have a tendency to mislead and
15 deceive a reasonable consumer.

16 76. WEAVER alleges that Defendant's representations were part of a
17 common scheme to mislead consumers and incentivize them to purchase products
18 from its website.

19 77. In purchasing the products from Defendant, WEAVER relied upon
20 Defendant's representations.

21 78. WEAVER would not have purchased products from Defendant if she
22 knew that the above-referenced statements made by Defendant were false.

23 79. Had Defendant properly marketed, advertised, and represented its
24 services as costing a hidden fee, WEAVER would not have used Defendant's
25 services.

26 80. WEAVER gave her money to Defendant because of the prices of
27 Defendant's products. Defendant benefited from falsely advertising its products

1 and services. WEAVER received nothing for giving her money to Defendant.
2 Defendant benefited on the loss to WEAVER and provided nothing of benefit to
3 WEAVER in exchange.

4 81. Had Defendant properly marketed, advertised, and represented its
5 services, no reasonable consumer who purchased a printer would have believed
6 that they could purchase products from Defendant without paying a membership
7 fee.

8 **PLAINTIFF MARK CASTRO'S FACTS**

9 82. In or around late 2016 or early 2017, CASTRO went to Defendant's
10 website and purchased some products utilizing Defendant's services.

11 83. In utilizing these services, CASTRO was informed through various
12 written representations by Defendant that he would not be charged for membership
13 and only the products that he purchased.

14 84. As a result of Defendant's representations, CASTRO provided
15 Defendant with his debit card information in order to purchase the products
16 referred to above.

17 85. However, Defendant upgraded his account to the premium
18 membership known as "Amazon Prime" without his permission or knowledge.

19 86. Over the course of several months, from late 2016 through the
20 present, CASTRO was charged by Defendant multiple times for the premium
21 "Amazon Prime" membership.

22 87. CASTRO is informed, believes, and thereupon alleges that Defendant
23 set up CASTRO's payment of the unauthorized and undesired membership to
24 automatically withdraw money directly from CASTRO's bank account.

25 88. As soon as CASTRO realized that Defendant had been making
26 automatic deductions from his bank account, he cancelled his membership.

27 89. CASTRO is informed, believes, and thereupon alleges that had not

1 CASTRO canceled the membership services, the Defendant would have taken
2 additional unauthorized, multiple, and reoccurring payments from CASTRO's
3 bank account.

4 90. CASTRO was drawn to use Defendant's website in part by
5 Defendant's prices.

6 91. Relying on Defendant's assurances that the prices by Defendant
7 would be accurate, CASTRO decided to purchase products from Defendant's
8 website.

9 92. Such sales tactics rely on falsities and have a tendency to mislead and
10 deceive a reasonable consumer.

11 93. CASTRO alleges that Defendant's representations were part of a
12 common scheme to mislead consumers and incentivize them to purchase products
13 from its website.

14 94. In purchasing the products from Defendant, SCOTT relied upon
15 Defendant's representations.

16 95. SCOTT would not have purchased products from Defendant if he
17 knew that the above-referenced statements made by Defendant were false.

18 96. Had Defendant properly marketed, advertised, and represented its
19 services as costing a hidden fee, SCOTT would not have used Defendant's
20 services.

21 97. SCOTT gave his money to Defendant because of the prices of
22 Defendant's products. Defendant benefited from falsely advertising its products
23 and services. SCOTT received nothing for giving his money to Defendant.
24 Defendant benefited on the loss to SCOTT and provided nothing of benefit to
25 SCOTT in exchange.

26 98. Had Defendant properly marketed, advertised, and represented its
27 services, no reasonable consumer who purchased a printer would have believed
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1 that they could purchase products from Defendant without paying a membership
2 fee.

3 **PLAINTIFF DRESSTIN WAGONER'S FACTS**

4 99. In or around August of 2016, WAGONER went to Defendant's
5 website and purchased some products utilizing Defendant's services.

6 100. In utilizing these services, WAGONER was informed through various
7 written representations by Defendant that he would not be charged for membership
8 and only for the products that he purchased.

9 101. As a result of Defendant's representations, WAGONER provided
10 Defendant with his debit card information in order to purchase the products
11 referred to above.

12 102. However, Defendant upgraded his account to the premium
13 membership known as "Amazon Prime" without his permission or knowledge.

14 103. Including taxes and fees WAGONER was charged on his debit card
15 for over \$107.17 for the premium membership. Also, Defendant charged
16 WAGONER \$11.9 for a renewal of his "Amazon Prime" membership and
17 automatically deducted that amount from his banking or debit card account.

18 104. WAGONER is informed, believes, and thereupon alleges that
19 Defendant set up WAGONER's payment of the unauthorized and undesired
20 membership to automatically withdraw money directly from WAGONER's bank
21 account.

22 105. WAGONER canceled the membership with Defendant after one
23 withdrawal of \$11.9.

24 106. However, Defendant continued to charge WAGONER for "Amazon
25 Prime" an additional \$107.17.

26 107. WAGONER is informed, believes, and thereupon alleges that had he
27 not canceled the membership services, Defendant would have taken additional
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1 unauthorized, multiple, and reoccurring payments from his bank account.

2 108. WAGONER was drawn to use Defendant's website in part by
3 Defendant's prices.

4 109. Relying on Defendant's assurances that the prices by Defendant
5 would be accurate, WAGONER decided to purchase products from Defendant's
6 website.

7 110. Such sales tactics rely on falsities and have a tendency to mislead and
8 deceive a reasonable consumer.

9 111. WAGONER alleges that Defendant's representations were part of a
10 common scheme to mislead consumers and incentivize them to purchase products
11 from its website.

12 112. In purchasing the products from Defendant, WAGONER relied upon
13 Defendant's representations.

14 113. WAGONER would not have purchased products from Defendant if
15 he knew that the above-referenced statements made by Defendant were false.

16 114. Had Defendant properly marketed, advertised, and represented its
17 services as costing a hidden fee, WAGONER would not have used Defendant's
18 services.

19 115. WAGONER gave his money to Defendant because of the prices of
20 Defendant's products. Defendant benefited from falsely advertising its products
21 and services. WAGONER received nothing for giving his money to Defendant.
22 Defendant benefited on the loss to WAGONER and provided nothing of benefit
23 to WAGONER in exchange.

24 116. Had Defendant properly marketed, advertised, and represented its
25 services, no reasonable consumer who purchased a printer would have believed
26 that they could purchase products from Defendant without paying a membership
27 fee.

CLASS ACTION ALLEGATIONS

117. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

118. Plaintiffs bring this action, on behalf of themselves and all others similarly situated, and thus, seeks class certification under *Federal Rule 23*.

119. The class Plaintiffs seek to represent (the “Class”) is defined as follows:

All consumers in the United States, who, between the applicable statute of limitations and the present, used Defendant's services and were charged an additional membership fee.

120. As used herein, the term "Class Members" shall mean and refer to the members of the Class described above.

121. Excluded from the Class are Defendant, its affiliates, employees, agents, and attorneys, and the Court.

122. In addition, Plaintiffss seek to represent the subclass (“EFTA subclass”) defined as follows:

All persons in the United States whose bank accounts were debited on a reoccurring basis by Defendants without Defendants obtaining a written authorization signed or similarly authenticated for preauthorized electronic fund transfers within the one year prior to the filing of this Complaint.

123. Plaintiffs MAKENNA, WEAVER, and CASTRO also seek to represent the subclass (“California subclass”) defined as follows:

All consumers in California, who, between the applicable statute of limitations and the present, used Defendant's services and were charged an additional membership fee.

124. Plaintiffs WAGONER and SCOTT seek to represent the subclass (“Texas subclass”) defined as follows:

1 All consumers in Texas, who, between the applicable
2 statute of limitations and the present, used Defendant's
3 services and were charged an additional membership fee.

4 125. Plaintiffs reserve the right to amend the Class, and to add additional
5 subclasses, if discovery and further investigation reveals such action is warranted.

6 126. Upon information and belief, the proposed class is composed of
7 thousands of persons. The members of the class are so numerous that joinder of
8 all members would be unfeasible and impractical.

9 127. No violations alleged in this complaint are contingent on any
10 individualized interaction of any kind between class members and Defendant.

11 128. Rather, all claims in this matter arise from the identical, false,
12 affirmative written statements that consumers would not need to pay additional
13 fees to purchase products from Defendant's website.

14 129. There are common questions of law and fact as to the Class Members
15 that predominate over questions affecting only individual members, including but
16 not limited to:

- 17 (a) Whether Defendant engaged in unlawful, unfair, or deceptive
18 business practices in charging Plaintiffs and other Class
19 Members for membership fees when they purchased products
20 from Defendant;
- 21 (b) Whether Defendant made misrepresentations with respect to its
22 services;
- 23 (c) Whether Defendant profited from charging membership fees;
- 24 (d) Whether Defendant violated Texas Business and Commerce
25 Code § 17.40 *et seq.*; California Bus. & Prof. Code § 17200, *et
26 seq.*, California Bus. & Prof. Code § 17500, *et seq.*, and
27 California Civ. Code § 1750, *et seq.*;
- 28 (e) Whether Plaintiffs and Class Members are entitled to equitable

1 and/or injunctive relief;

2 (f) Whether Defendant's unlawful, unfair, and/or deceptive
3 practices harmed Plaintiffs and Class Members; and

4 (g) The method of calculation and extent of damages for Plaintiffs
5 and Class Members.

6 130. Plaintiffs are members of the class they seeks to represent

7 131. The claims of Plaintiffs are not only typical of all class members, they
8 are identical.

9 132. All claims of Plaintiffs and the class are based on the exact same legal
10 theories.

11 133. Plaintiffs have no interest antagonistic to, or in conflict with, the
12 class.

13 134. Plaintiffs are qualified to, and will, fairly and adequately protect the
14 interests of each Class Member, because Plaintiff bought Class Products from
15 Defendant during the Class Period. Defendant's unlawful, unfair and/or
16 fraudulent actions concerns the same business practices described herein
17 irrespective of where they occurred or were experiences. Plaintiffs' claims are
18 typical of all Class Members as demonstrated herein.

19 135. Plaintiffs will thoroughly and adequately protect the interests of the
20 class, having retained qualified and competent legal counsel to represent
21 themselves and the class.

22 136. Common questions will predominate, and there will be no unusual
23 manageability issues.

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FIRST CAUSE OF ACTION

Violation of the California False Advertising Act

(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)

-Plaintiffs MAKENNA, WEAVER, & CASTRO and the California

SubClass-

137. Plaintiffs incorporate by reference each allegation set forth above.

7 138. Pursuant to California Business and Professions Code section 17500,
8 *et seq.*, it is unlawful to engage in advertising “which is untrue or misleading, and
9 which is known, or which by the exercise of reasonable care should be known, to
10 be untrue or misleading...or...to so make or disseminate or cause to be so made or
11 disseminated any such statement as part of a plan or scheme with the intent not to
12 sell that personal property or those services, professional or otherwise, so
13 advertised at the price stated therein, or as so advertised.”

14 139. California Business and Professions Code section 17500, *et seq.*'s
15 prohibition against false advertising extends to the use of false or misleading
16 written statements.

17 140. Defendant misled consumers by making misrepresentations and
18 untrue statements about its services, namely, Defendant informed Plaintiffs and
19 California Subclass Members that it would not charge them for membership fees
20 in order to purchase products on its website, and made false representations to
21 Plaintiffs and other putative California Subclass members in order to solicit these
22 transactions.

23 141. Defendant knew that their representations and omissions were untrue
24 and misleading, and deliberately made the aforementioned representations and
25 omissions in order to deceive reasonable consumers like Plaintiffs and other
26 California Subclass Members.

27 142. As a direct and proximate result of Defendant's misleading and false

1 advertising, Plaintiffs and the other California Subclass Members have suffered
2 injury in fact and have lost money or property. Plaintiffs reasonably relied upon
3 Defendant's representations regarding Defendant's services. In reasonable
4 reliance on Defendant's false advertisements, Plaintiffs and other California
5 Subclass Members purchased products from Defendant. In turn, Plaintiffs and
6 other California Subclass Members were charged more than represented, and
7 therefore Plaintiffs and other California Subclass Members have suffered injury in
8 fact.

9 143. Plaintiffs allege that these false and misleading written
10 representations made by Defendant constitute a "scheme with the intent not to sell
11 that personal property or those services, professional or otherwise, so advertised
12 at the price stated therein, or as so advertised."

13 144. Defendant advertised to Plaintiffs and other putative California
14 Subclass members, through written representations and omissions made by
15 Defendant and its employees, that they could purchase products without paying a
16 membership fee.

17 145. Defendant knew that a membership fee would be charged.

18 146. Thus, Defendant knowingly sold charged Plaintiffs and other putative
19 California Subclass members for fees that it represented as not charging.

20 147. The misleading and false advertising described herein presents a
21 continuing threat to Plaintiffs and the California Subclass Members in that
22 Defendant persists and continues to engage in these practices, and will not cease
23 doing so unless and until forced to do so by this Court. Defendant's conduct will
24 continue to cause irreparable injury to consumers unless enjoined or restrained.
25 Plaintiffs are entitled to preliminary and permanent injunctive relief ordering
26 Defendant to cease their false advertising, as well as disgorgement and restitution
27 to Plaintiffs and all California Subclass Members Defendant's revenues associated
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1 with their false advertising, or such portion of those revenues as the Court may
2 find equitable.

3 **SECOND CAUSE OF ACTION**

4 **Violation of Unfair Business Practices Act**

5 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

6 **-Plaintiffs MAKENNA, WEAVER, & CASTRO and the California**

7 **Subclass-**

8 148. Plaintiffs incorporate by reference each allegation set forth above.

9 149. Actions for relief under the unfair competition law may be based on
10 any business act or practice that is within the broad definition of the UCL. Such
11 violations of the UCL occur as a result of unlawful, unfair or fraudulent business
12 acts and practices. A plaintiff is required to provide evidence of a causal
13 connection between a defendant's business practices and the alleged harm--that is,
14 evidence that the defendant's conduct caused or was likely to cause substantial
15 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct
16 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory
17 definition of unfair competition covers any single act of misconduct, as well as
18 ongoing misconduct.

19 **UNFAIR**

20 150. California Business & Professions Code § 17200 prohibits any
21 "unfair ... business act or practice." Defendant's acts, omissions,
22 misrepresentations, and practices as alleged herein also constitute "unfair"
23 business acts and practices within the meaning of the UCL in that its conduct is
24 substantially injurious to consumers, offends public policy, and is immoral,
25 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs
26 any alleged benefits attributable to such conduct. There were reasonably available
27 alternatives to further Defendant's legitimate business interests, other than the
28

1 conduct described herein. Plaintiff reserves the right to allege further conduct
2 which constitutes other unfair business acts or practices. Such conduct is ongoing
3 and continues to this date.

4 151. In order to satisfy the “unfair” prong of the UCL, a consumer must
5 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
6 benefits to consumers or competition; and, (3) is not one that consumers
7 themselves could reasonably have avoided.

8 152. Here, Defendant’s conduct has caused and continues to cause
9 substantial injury to Plaintiff and members of the California Subclass. Plaintiffs
10 and members of the California Subclass have suffered injury in fact due to
11 Defendant’s decision to charge them for its services in order to buy products.
12 Thus, Defendant’s conduct has caused substantial injury to Plaintiffs and the
13 members of the California Subclass.

14 153. Moreover, Defendant’s conduct as alleged herein solely benefits
15 Defendant while providing no benefit of any kind to any consumer. Such
16 deception utilized by Defendant convinced Plaintiffs and members of the
17 California Subclass that Defendant’s services were free, in order to induce them
18 to spend money on its website. In fact, knowing that Defendant’s services cost
19 money, Defendant’s unfairly profited from Plaintiffs and California Subclass
20 Members. Thus, the injury suffered by Plaintiffs and the members of the
21 California Subclass is not outweighed by any countervailing benefits to
22 consumers.

23 154. Finally, the injury suffered by Plaintiffs and members of the
24 California Subclass is not an injury that these consumers could reasonably have
25 avoided. After Defendant, falsely represented Defendant’s services, these
26 consumers suffered injury in fact due to Defendant’s charge for premium
27 membership. Defendant failed to take reasonable steps to inform Plaintiffs and

1 California Subclass members that Defendant's services included a charge for
2 premium membership, including failing to provide an opportunity to Plaintiffs and
3 California Subclass members to read and review the accurate conditions of the
4 purchase prior to purchasing items from Defendant. As such, Defendant took
5 advantage of Defendant's position of perceived power in order to deceive
6 Plaintiffs and the California Subclass members to use its services. Therefore, the
7 injury suffered by Plaintiffs and members of the California Subclass is not an
8 injury which these consumers could reasonably have avoided.

9 155. Thus, Defendant's conduct has violated the "unfair" prong of
10 California Business & Professions Code § 17200.

11 **FRAUDULENT**

12 156. California Business & Professions Code § 17200 prohibits any
13 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"
14 prong of the UCL, a consumer must allege that the fraudulent business practice
15 was likely to deceive members of the public.

16 157. The test for "fraud" as contemplated by California Business and
17 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
18 common law fraud, a § 17200 violation can be established even if no one was
19 actually deceived, relied upon the fraudulent practice, or sustained any damage.

20 158. Here, not only were Plaintiffs and the California Subclass members
21 likely to be deceived, but these consumers were actually deceived by Defendant.
22 Such deception is evidenced by the fact that Plaintiffs purchased products using
23 Defendant's website under the basic assumption that he would not be charged an
24 additional price. Plaintiffs' reliance upon Defendant's deceptive statements is
25 reasonable due to the unequal bargaining powers of Defendant and Plaintiffs. For
26 the same reason, it is likely that Defendant's fraudulent business practice would
27 deceive other members of the public.

28

159. As explained above, Defendant deceived Plaintiffs and other California Subclass Members by representing its services as being free, falsely represented these services to consumers.

160. Thus, Defendant's conduct has violated the "fraudulent" prong of California Business & Professions Code § 17200.

UNLAWFUL

161. California Business and Professions Code Section 17200, et seq. prohibits “any unlawful...business act or practice.”

162. As explained above, Defendant deceived Plaintiffs and other California Subclass Members by representing the services as being free.

163. Defendant used false advertising, marketing, and misrepresentations to induce Plaintiffs and California Subclass Members to purchase the California Subclass Products, in violation of California Business and Professions Code Section 17500, et seq. Had Defendant not falsely advertised, marketed or misrepresented the California Subclass Products, Plaintiffs and California Subclass Members would not have purchased the California Subclass Products. Defendant's conduct therefore caused and continues to cause economic harm to Plaintiffs and California Subclass Members.

164. These representations by Defendant are therefore an “unlawful” business practice or act under Business and Professions Code Section 17200 *et seq.*

165. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts entitling Plaintiffs and California Subclass Members to judgment and equitable relief against Defendant, as set forth in the Prayer for Relief. Additionally, pursuant to Business and Professions Code section 17203, Plaintiff and California Subclass Members seek an order requiring Defendant to immediately cease such acts of unlawful, unfair, and fraudulent business practices

1 and requiring Defendant to correct its actions.

2 **THIRD CAUSE OF ACTION**

3 **Violation of Consumer Legal Remedies Act**

4 **(Cal. Civ. Code § 1750 *et seq.*)**

5 **-Plaintiffs MAKENNA, WEAVER, & CASTRO and the California**
6 **Subclass-**

7 166. Plaintiffs incorporate by reference each allegation set forth above
8 herein.

9 167. Defendant's actions as detailed above constitute a violation of the
10 Consumer Legal Remedies Act, Cal. Civ. Code §1770 to the extent that Defendant
11 violated the following provisions of the CLRA:

- 12 a. Representing that goods or services have sponsorship, approval,
13 characteristics, ingredients, uses, benefits, or quantities which they do
14 not have or that a person has a sponsorship, approval, status, affiliation,
15 or connection which he or he does not have. Cal. Civ. Code § 1770(5);
- 16 b. Representing that goods or services are of a particular standard,
17 quality, or grade, or that goods are of a particular style or model, if they
18 are of another. Cal. Civ. Code § 1770(7);
- 19 c. Advertising goods or services with intent not to sell them as advertised;
20 *Cal. Civ. Code* §1770(9);
- 21 d. Representing that a transaction confers or involves rights, remedies, or
22 obligations which it does not have or involve, or which are prohibited
23 by law; *Cal. Civ. Code* §1770(14); and
- 24 e. Representing that the subject of a transaction has been supplied in
25 accordance with a previous representation when it has not; *Cal. Civ.*
26 *Code* §1770(16);

27 168. On or about August 3, 2017 and September 25, 2017, through their
28 Counsel of record, using certified mail with a return receipt requested, Plaintiffs,
served Defendants with notice of its violations of the CLRA, and asked that

1 Defendants correct, repair, replace or otherwise rectify the goods and services
2 alleged to be in violation of the CLRA; this correspondence advised Defendants
3 that they must take such action within thirty (30) calendar days, and pointed
4 Defendants to the provisions of the CLRA that Plaintiffs believe to have been
5 violated by Defendants. Defendants have not replied to this correspondence, and
6 have thereby refused to timely correct, repair, replace or otherwise rectify the
7 issues raised therein. In addition, Plaintiffs will separately file a Venue Affidavit
8 in compliance with the requirements of the CLRA.

9 **FOURTH CAUSE OF ACTION**

10 **Violation of Texas' Deceptive Trade Practices-Consumer Protection Act** 11 **(Texas Business and Commerce Code § 17.40, *et seq.*)**

12 **-Plaintiffs WAGONER & SCOTT and the Texas Subclass-**

13 169. Plaintiffs incorporates by reference each allegation set forth above.

14 170. Texas Business and Commerce Code §§ 17.50, *et seq.*, is part of
15 Texas' Deceptive Trade Practices-Consumer Protection Act ("DTPA") and
16 provides in relevant part:

17 (a) A consumer may maintain an action where any of the following
18 constitute a producing cause of economic damages or damages for
19 mental anguish:

20 (1) The use or employment by any person of a false,
21 misleading, or deceptive act or practice that is [or]...
22 (3) any unconscionable action or course of action by any
23 person

24 171. In doing the acts alleged above, Defendant engaged in false,
25 misleading, deceptive, and unconscionable acts and practices.

26 172. Defendant misled Plaintiffs and the Texas Subclass by making
27 misrepresentations and untrue statements about their services, namely that
28 Purchasers would not be charged for or automatically enrolled in "Amazon

1 Prime,” and made false representations to Plaintiff and other putative class
2 members in order to solicit these transactions.

3 173. Specifically, Defendant advertised Texas Subclass would not be
4 automatically charged for “Amazon Prime” membership, nor would they be
5 automatically enrolled therein.

6 174. Defendant knew that their representations and omissions were untrue
7 and misleading, and deliberately made the aforementioned representations and
8 omissions in order to deceive reasonable Purchasers like Plaintiff and other Texas
9 Subclass Members.

10 175. As a direct and proximate result of Defendant’s misleading and false
11 advertising, Plaintiff and the Texas Subclass Members have suffered injury in fact
12 and have lost money or property. Plaintiff reasonably relied upon Defendant’s
13 representations regarding the Class Products, namely that they would not be
14 automatically enrolled in “Amazon Prime” resulting in their savings or debit card
15 accounts being charged without their consent. In reasonable reliance on
16 Defendant’s false advertisements, Plaintiffs and other Texas Subclass Members
17 purchased the Class Products. In turn Plaintiffs and other Texas Subclass
18 Members ended up with unwanted charges to their savings or debit card accounts
19 and were automatically enrolled in “Amazon Prime” which turned out to actually
20 be different than advertised, and therefore Plaintiff and other Texas Subclass
21 Members have suffered injury in fact.

22 176. Plaintiffs allege that these false and misleading written
23 representations made by Defendant constitute a “scheme with the intent not to sell
24 that personal property or those services, professional or otherwise, so advertised
25 at the price stated therein, or as so advertised.”

26 177. Defendant advertised to Plaintiffs and other putative Texas Subclass
27 members, through written representations and omissions made by Defendant and
28

1 its employees, that they would not be automatically enrolled in “Amazon Prime”
2 and have their savings or debit card accounts automatically charged.

3 178. Defendant knew that Texas Subclass Members, by making a
4 purchase, would be automatically enrolled in “Amazon Prime,” and Defendant
5 would then charge their savings or debit card accounts.

6 179. Thus, Defendant knowingly sold Class Products to Plaintiffs and
7 other putative Texas Subclass members that resulted in them being automatically
8 enrolled in “Amazon Prime” and their savings or debit card accounts charged by
9 Defendant.

10 180. In committing the acts alleged above, Defendants also engaged in the
11 following acts set forth in TEX. BUS. & COM. CODE § 17.46, among others, which
12 provides in pertinent part:

- 13 (a) False, misleading, or deceptive acts or practices in the
14 conduct of any trade or commerce are hereby declared unlawful
15 ...
16 (b) Except as provided in Subsection (d) of this section, the
17 term “false, misleading, or deceptive acts or practices” includes,
18 but is not limited to, the following acts: ...
19 (5) representing that goods or services have ...
20 characteristics, ... [or] benefits ... which they do not have ... ;
21 (7) representing that goods or services are of a particular
22 standard, quality, or grade, ... if they are of another; ...
23 (9) advertising goods or services with intent not to sell them
24 as advertised; ...
25 (24) failing to disclose information concerning goods or
26 services which was known at the time of the transaction if such
27 failure to disclose such information was intended to induce the
28 consumer into a transaction into which the consumer would
not have entered had the information been disclosed.

181. The misleading and false advertising described herein presents a
continuing threat to Plaintiffs and the Texas Subclass Members in that Defendant
persists and continues to engage in these practices, and will not cease doing so
unless and until forced to do so by this Court. Defendant’s conduct will continue

1 to cause irreparable injury to Purchasers unless enjoined or restrained. Plaintiffs
 2 are entitled to preliminary and permanent injunctive relief ordering Defendant to
 3 cease their false advertising, as well as disgorgement and restitution to Plaintiffs
 4 and all Texas Subclass Members Defendant's revenues associated with their false
 5 advertising, or such portion of those revenues as the Court may find equitable.

6 **FIFTH CAUSE OF ACTION**

7 **Electronic Funds Transfer Act**

8 **(15 U.S.C. Section 1693 *et seq.*)**

9 **- Plaintiffs and the Class and EFTA Sub Class-**

10
 11
 12 182. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a
 13 “preauthorized electronic fund transfer from a consumer’s account may be
 14 authorized by the consumer only in writing, and a copy of such authorization
 15 shall be provided to the consumer when made.”

16
 17
 18 183. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the
 19 term “preauthorized electronic fund transfer” means “an electronic fund transfer
 20 authorized in advance to recur at substantially regular intervals.”

21
 22
 23 184. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides
 24 that “[p]reauthorized electronic fund transfers from a consumer’s account may
 25 be authorized only by a writing signed or similarly authenticated by the
 26 consumer. The person that obtains the authorization shall provide a copy to the
 27 consumer.”

28
 29
 30 185. Section 205.10(b) of the Federal Reserve Board's Official Staff
 31 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he
 32 authorization process should evidence the consumer’s identity and assent to the
 33 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary

further provides that “[a]n authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.” *Id.* at ¶10(b), comment 6.

186. In multiple instances, Defendants have debited Plaintiffs' and the Class and EFTA Subclass' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated for preauthorized electronic fund transfers from Plaintiffs the Class and EFTA Subclass' accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

187. In multiple instances, Defendants have debited Plaintiffs the Class and EFTA Subclass' bank accounts on a recurring basis without providing a copy of a written authorization signed or similarly authenticated by Plaintiffs the Class and EFTA Subclass' for preauthorized electronic fund transfers, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

MISCELLANEOUS

188. Plaintiffs and Class Members allege that they have fully complied with all contractual and other legal obligations and fully complied with all conditions precedent to bringing this action or all such obligations or conditions are excused.

REQUEST FOR JURY TRIAL

189. Plaintiffs request a trial by jury as to all claims so triable.

PRAYER FOR RELIEF

190. Plaintiffs, on behalf of himself and the Class, requests the following relief:

(a) An order certifying the Class and appointing Plaintiffs as Representative of the Class;

- 1 (b) An order certifying the undersigned counsel as Class Counsel;
- 2 (c) An order requiring AMAZON.COM, LLC, at its own cost, to
- 3 notify all Class Members of the unlawful and deceptive
- 4 conduct herein;
- 5 (d) An order requiring AMAZON.COM, LLC to engage in
- 6 corrective advertising regarding the conduct discussed above;
- 7 (e) Actual damages suffered by Plaintiffs and Class Members as
- 8 applicable or full restitution of all funds acquired from
- 9 Plaintiffs and Class Members from the sale of misbranded
- 10 Class Products and Services during the relevant class period;
- 11 (f) Punitive damages, as allowable, in an amount determined by
- 12 the Court or jury;
- 13 (g) Any and all statutory enhanced damages;
- 14 (h) All reasonable and necessary attorneys' fees and costs provided
- 15 by statute, common law or the Court's inherent power;
- 16 (i) Pre- and post-judgment interest; and
- 17 (j) All other relief, general or special, legal and equitable, to which
- 18 Plaintiffs and Class Members may be justly entitled as deemed
- 19 by the Court.

20 Dated: September 25, 2017 Respectfully submitted,

21 LAW OFFICES OF TODD M. FRIEDMAN , PC

22 By: /s/Todd M. Friedman, Esq.

23 TODD M. FRIEDMAN, ESQ.

24 Attorney for Plaintiffs LAURA

25 MAKENNA, REGINALD SCOTT,

26 LORI MARIE WEAVER, MARK

27 CASTRO, and DRESSTIN WAGONER

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is The Law Offices of Todd M. Friedman, P.C., 21550 Oxnard St., Suite 780, Woodland Hills, CA 91367. On September 25, 2017, I served the within document(s):

FIRST AMENDED COMPLAINT

- were served on all parties or their counsel of record named below by serving a true and correct copy in the manner indicated.

Scott R. Commerson
DAVIS WRIGHT TREMAINE LLP
865 South Figueroa St., 24th Fl.
Los Angeles, CA 90017
scottcommerson@dwt.com

ECF – I caused the above document(s) and all supporting papers to be served on all counsel named above to through the ECF system.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 25, 2017, at Woodland Hills, California.

s/Todd M. Friedman
Todd M. Friedman